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ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Report on Haiti by the Expert, Mr. Philippe Texier, prepared in conformity with Commission on Human Rights resolution 1989/73

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INTRODUCTION

1. At its forty-fifth session the Commission on Human Rights examined the Expert's report (E/CN.4/1989/40) and adopted resolution 1989/73 entitled "Assistance to Haiti in the field of human rights". The operative paragraphs of this resolution are reproduced below:

"...

1. Expresses its appreciation to the Expert appointed by the Secretary-General for his report and for the way in which he has discharged his mandate;

2. Welcomes the co-operation extended by the Haitian authorities to the Expert during his visit to Haiti from 15 to 22 December 1988, and the readiness of those authorities to continue their co-operation with the Commission on Human Rights;

3. Notes with concern the Expert's observation that, although there has been some improvement in the human rights situation since 17 September 1988, the basic causes of the violations have not been eradicated and may give rise to further outbreaks of violence at any time;

4. Welcomes with interest Haiti's accession to a number of human rights conventions and, in particular, to the Covenants and the declared determination of the Haitian authorities to comply with them, although those international instruments have not yet been incorporated into the Haitian legal system, pending the enforcement of the relevant constitutional provisions;

5. Urges the Haitian authorities to take measures without delay to ensure the rapid investigation of the serious violations of human rights which occurred before 17 September 1988, in particular, the sad events of 29 November 1987 and 11 September 1988, and to ensure that the mandate of the commission of inquiry enables it to single out the culprits for arrest and trial;

6. Expresses the hope that the Haitian Government will, as it has pledged, be able to restore as soon as possible a constitutional régime freely chosen by the Haitian people;

7. Encourages the Haitian Government to pursue the contacts which it has established with the various democratic forces in the country in order to expedite the resumption of the electoral process and, inter alia, to take measures to ensure the physical safety of citizens and their freedom to vote;

8. Appeals to the international community to provide all possible assistance to Haiti in order to help it in the implementation of economic, social and cultural rights, as well as civil and political rights;

9. Requests the Secretary-General to provide advisory services and all other appropriate forms of assistance in the field of human rights in order to encourage the régime's democratic development;

10. Endorses the Expert's recommendations contained in paragraph 139 (e) and (f) of his report (E/CN.4/1989/40), and requests the Secretary-General, in the programme to be established in co-operation with the Haitian Government, to give emphasis, inter alia, to measures designed to strengthen the independence of the judiciary and to promote the organization of civilian police services trained in human rights;

11. Requests the Secretary-General, in consultation with the Haitian authorities, to extend the Expert's mandate for one year, and requests the Expert to encourage the implementation of the Secretary-General's programme, as determined jointly with the Government of Haiti, and to make to the Government all necessary recommendations for the full restoration of human rights;

12. Requests the Expert, in his report, to provide information also on the development of the human rights situation in Haiti;

13. Requests the Secretary-General to provide all necessary assistance to the Expert;

14. Decides to consider the Expert's report at its forty-sixth session."

2. In paragraph 10 of this resolution, the Commission endorsed the Expert's recommendations in paragraph 139 (e) and (f) of his report. These recommendations read as follows:

"(e) Assuming the Commission feels that advisory services should be provided, the Expert recommends that efforts should focus on:

(i) Holding free elections under peaceful conditions and with guarantees for citizens' safety;

(ii) Strengthening and improving the judiciary to enable it to fulfil its mission with complete independence;

(iii) Support for planning a general policy regarding development and assistance for the poorest communities;

(iv) Specific technical assistance in matters pertaining to the police, so as to foster the organization of civilian police services trained in human rights and in the minimum standards for maintaining order;

(f) If assistance in advisory services is maintained, the Expert also recommends that all human rights organizations should be involved in any training programmes."

3. The Expert was guided by these recommendations in making his visit to Haiti from 25 July to 3 August 1989 and in establishing relations with the Government of Haiti and non-governmental organizations.

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I. GENERAL DEVELOPMENTS IN HAITI DURING 1989

4. The previous report outlined events between 7 February 1986, when the Duvalier régime fell, and 31 December 1988. There is no need to go over the ground again here; what follows is a summary of the main events of 1989, up to 15 December 1989.

5. The year 1988 ended with the departure, on 31 December 1988, of the former Mayor of Port-au-Prince, Franck Romain, considered by many sectors of public opinion to have been behind the massacre in the Church of Saint-Jean-Bosco on 10 September 1988. Accompanied by the Ambassador of the Dominican Republic to Haiti and several members of the military, F. Romain was granted asylum by the Dominican authorities, a fact used by the Government of Haiti to justify his departure.

6. The news was announced on 1 January 1989 in an official statement by the Ministry of Information and Co-ordination, which declared that "the Government of the Republic, in its desire to fulfil its obligations under the Inter-American Convention on Political Asylum, to which Haiti is party, has, at the request of the Government of the Dominican Republic, duly granted safe conduct to Mr. Franck Romain, who had taken refuge in the Dominican Embassy at Port-au-Prince for over three months. This action does not prejudice in any way the judicial proceedings instituted against the person in question, and the Haitian State reserves the right to take any action which may be necessary in that connection, in conformity with Haitian law and international rules".

7. The Procurator of the Republic, Mr. Djacaman Charles, declared for his part that "the judicial authorities have nothing to do with the question of the safe conduct granted to Franck Romain. It is a purely diplomatic issue".

8. At a time when the people of Haiti were demanding justice, as they continue to do, the action was very badly received by most political forces in Haiti, and all the more so because the Dominican Government had hinted at the possibility of expelling Roger Lafontant, a former minister under the Duvaliers, in exchange for the asylum given to F. Romain. However, the Dominican Government did not expel him.

9. The decision prompted a number of political, trade-union and civic organizations to refuse to participate in the election forum announced by General Avril on 1 January for mid-January 1989, which was subsequently postponed to 9 February.

10. On 18 January 1989, an examining magistrate charged Franck Romain in his absence. The criminal file was transmitted by the Ministry of Foreign Affairs to the Dominican Government for extradition purposes, but it was sent back because of formal irregularities. According to human rights associations, there is little hope of securing his extradition, particularly because "there is no bilateral extradition treaty between the two Governments. The Haitian State has not ratified the regional extradition conventions of Montevideo (1983) or Caracas (1981)."

11. In late January, a study by the Minister of Information and Co-ordination, Antony Virginie Saint-Pierre, fell into the hands of the press and caused much concern amongst public opinion. The document, entitled "Analysis of the national political situation in the week 9-14 January 1989",

sent by the Ministry of Information to General Prosper Avril, accused a number of leaders of trade unions and other popular movements in the Central Plateau of wanting to destabilize the State.

12. It stated that: "Methodical and systematic efforts to destabilize the Government of the Republic are being made in the Central Plateau, mainly through the MPP (Peasant Movement of Papaye), led by Mr. Jean-Baptiste Chavanne. The immediate intention of those who control and influence these peasant movements is to launch a large-scale peasant uprising in the next few days, which the Government of Lieutenant-General Prosper Avril will be obliged to suppress by force, and perhaps even with bloodshed".

13. The document accuses the National Co-operation Front (FNC), the United Haitian Communist Party (PUCH), the Charlemagne Péralte Front (FCP) and the "Ti-Légliz" (poor Catholic communities) of supporting the destabilization.

14. The uprising was supposed to take place at the end of January and, "certainly before 7 February 1989". Nothing of the sort happened, but the repressive methods advocated are extremely serious: sending "intelligent agents, loyal to the Head of State to gather detailed first-hand information on the social and political situation in these areas", setting up military check-points on the way into towns in order to identify all people entering or leaving them, centralizing this information, reinforcing the military units stationed at Hinche and infiltrating all groups, vetting people nominated as mayors and deputy mayors, forming clubs and associations "in order to channel people's energies and keep an eye on the young".

15. The political parties denounced the Minister's attitude and the increased tension at the beginning of the year.

16. It was also at this time that there was a disturbing rise in the crime rate, both in Port-au-Prince and in rural areas: rapes, murders, burglaries, generally carried out by armed groups, without the police taking any serious measures to tackle this breakdown in law and order, which continued throughout the year.

17. The forum on plans for a body to organize and supervise election operations was held in Port-au-Prince from 9 to 17 February 1989. The presidential order convening it specified that, if the forum could not agree on the establishment of such a body, it would be set up by a decree, "which would take into account, as far as possible, criticisms and suggestions from all political groups".

18. However, political opinion was divided. Groups in favour of the forum proposed the formation of an electoral council which would be independent of the executive, and also the formation of a political coalition comprising Marc Bazin of the Movement for the Institution of Democracy in Haiti (MIDH), Serge Gilles of the National Progressive Revolutionary Party of Haiti (PANPRA), René Théodore of the United Haitian Communist Party (PUCH), Déjean Bélizaire of the National Patriotic Movement of 28 November (MNP28), Jean-Claude Roy of the Movement of Volunteers for Free Elections in Haiti (MOVELH), Jean-Claude Lebrun from the Haitian Workers Autonomous Confederation (CATH/CLAT) and Joseph Sénat of the Federation of Haitian Workers (FOH).

19. Other groups were against the forum being held, and even called for a strike when it opened (Louis Déjoie, Sylvio Claude, Rockfeller Guerre), but support for the strike was patchy. Some of those who were calling for the forum to be boycotted were detained while it was in session, including Rockfeller Guerre and Sylvain Jolibois.

20. A week after the forum's recommendations were submitted to General Avril, a decree setting up the Electoral Council was published. Without referring directly to the 1987 Constitution, the decree more or less followed the terms of it, except for article 291, which bans anyone involved in past repression as a member of the Duvalier régime from standing for any elected post for 10 years. The decree authorizes the Government to set up a Provisional Electoral Council and a Permanent Electoral Council.

21. It was also in February 1989 that Mr. Arnault Guerrier, the Minister of Social Affairs, launched a social rehabilitation programme, aimed at the most deprived members of the community. The programme focused on two areas: vocational training and the promotion of income-generating projects; it provided for the establishment of training centres, literacy programmes, vacancy registers and grants for job training and orientation. But the only step which seems to have been taken is that 200 dollars has been given to 500 unemployed people, shopkeepers and low-paid professionals.

22. A few days after the forum there was a ministerial reshuffle: Colonel Acédium Saint-Louis replaced Colonel Carl Dorsainvil at the Ministry of the Interior; at the Ministry of Justice Mr. Augustin Romain Cemé replaced Mr. Gilbert Austin, who was appointed President of the Court of Cassation.

23. At the same time General Avril partially restored the 1987 Constitution through a decree, "subject to temporary suspension of a number of articles which are incompatible with the nature of the present Government". Article 1 of the decree listed the 36 articles which were provisionally set aside. They dealt principally with:

(a) The trial of members of the military before the ordinary courts, military courts only retaining their prerogative for cases of violations of military regulations;

(b) The prerogatives and duties of the legislative power, exercised by two chambers (the Chamber of Deputies and the Senate);

(c) The sharing of executive power between a President (the Head of State) and a Prime Minister (the Head of Government); the replacement of the Head of State, should the Presidency fall vacant, by the President of the Court of Cassation;

(d) The arrangements for State financing of procedures for consulting the electorate;

(e) The ban on amending the Constitution by referendum.

Although public reaction in Haiti was lukewarm, this restoration of part of the Constitution was nevertheless a positive step.

24. In March 1989, the Head of State dismissed several members of the military, mostly officers, accusing them of having links with drug-trafficking and of making money through illicit means. However, it seems that a number of dismissals, involving privates or non-commissioned officers, were for other reasons which have never been made public.

25. On 13 March, General Prosper Avril sent a letter to his Minister of Justice requesting him to undertake a thorough reform of the Haitian justice system, including the transfer of responsibility for the prison system to the Ministry of Justice.

26. The Provisional Electoral Council was formed, and had to be sworn in twice because of an attempted coup d'état. The Chairman was Louis Antoine Auguste, the Vice-Chairman - Gabriel H. Augustin, the Secretary-General in charge of public relations - Jean-Gérard Pierre, the Treaturer - Jacques Jovin and the Councillors - Archange Léon Joseph Lespérance, Rony Durand and Max Lélio Joseph. It also included Archange Léon and Pastor Jean-Baptiste Pauris.

27. In April there was an abortive coup d'état which came close enough to success to cause world-wide concern. In the night of 1-2 April 1989, at 2 a.m., General Prosper Avril was taken prisoner by members of the élite Leopard Corps. The intention was to take the President to the airport at around 10 a.m., and then on to an unknown destination, but the convoy escorting him was intercepted by troops from the Presidential Guard. After a short battle, they freed General Avril and took him back to the Palais National. The apparent instigators of the coup d'état were immediately arrested. These were: Lieutenant-Colonel Himmler Rébu, Commander of the Leopard Corps, Lieutenant-Colonel Philippe Biamby, Commander of the Presidential Guard, and Lieutenant-General Léonce Qualo from the General Headquarters. Hostages had been taken on both sides, including one of General Avril's sons. Talks took place throughout the day and, at 4 p.m., the Minister of Information announced that President Avril was in control of the situation.

28. During the night of 2-3 April, at 12.20 a.m., General Avril addressed the nation in Creole and French, surrounded by heavily armed troops. He did not mention the drug traffic, but the need, with our "foreign partners" in mind, for support to maintain the programme intended to lead to elections and the restoration of full democracy. The organizers of the coup d'état then released the President's mother-in-law and son and the son of Colonel Acédius Saint-Louis, and the three arrested officers were taken to the Dominican Republic that evening.

29. Meanwhile, several clashes were taking place at Delmas and Petionville, and barricades were set up. In the next few days, schools, banks and department stores were closed; the situation seemed to be settling down when on 5 April the Dessalines barracks battalion rose up against the Government and went on the radio to demand that General Avril should step down and be replaced by a civilian. The Minister of the Interior then declared a state of emergency and imposed a curfew. Censorship of radio and television was also instituted.

30. On 6 April, members of the military sabotaged several radio transmitters, and on 7 April there was a direct confrontation between the Presidential Guard and the soldiers from the Dessalines barracks. On 8 April, the Dessalines barracks, abandoned by their occupants, were taken over by soldiers of the Presidential Guard. The shooting continued until 10 April. On that day, General Avril gave a press conference, at which he explained that there were no winners or losers and that only a military man like himself could handle such a situation. He also stated that the coup d'état was connected with the appointment of the members of the Provisional Electoral Council, that democracy was a long-term process, that the date of the elections was not the main priority and that he had the political will to guarantee the population's physical safety and right to be informed.

31. On 14 April, six soldiers killed during the clashes were buried, and the curfew was lifted. The schools did not start operating again properly until 17 April. The exact number of military killed during these clashes will never be known: the official figure is six; some have claimed the real figure is as many as several dozen. Several sources of information indicate that Duvalier supporters inside the country, and perhaps even outside, planned or participated in this takeover attempt.

32. One of the consequences of the failed coup d'état was the disbandment of the two élite units of the Haitian army: the Dessalines barracks battalion and the Leopard Corps. Most of the officers and soldiers of these two units were transferred to the provinces by decision of the Military Government and the General Staff. Some resigned, but others were also appointed to other posts in Port-au-Prince. Since then, the Dessalines barracks have been occupied by the Presidential Guard, and the only access to them is through the National Palace.

33. The only operational military force for the Head of State is now the Presidential Guard, numbering 1,100 men. It is a sort of army within the army and, according to various sources, receives extra pay in comparison with the rest of the military. It is said to have repeatedly been guilty of acts of extortion against the civilian population and humiliation of senior officers of the ordinary army. As a result of these incidents, an Information and Security Service (SRS) is said to have been established under the direction of the Commander of the Presidential Guard, Colonel Christophe Dardompré.

34. As the months passed, insecurity continued to be a factor of serious concern for the Haitian population; on 16 May, for example, a bomb exploded on the Champ-de-Mars, within a hundred yards of the Presidential Palace, during a demonstration commemorating the one hundred and eighty sixth anniversary of Haitian Flag Day. Assaults, thefts, rapes, intimidation, kidnapping and murders in various parts of the country were reported in the press daily. Shopkeepers were visited by men in military fatigue dress demanding money; self-defence squads were established both in residential areas and in the shanty towns. It is difficult to establish the dividing line between ordinary crime and political acts, but there were so many cases of lawlessness and terrorism that some saw them as evidence of a deliberate intention to establish a climate unfavourable to the setting-up of a peaceful electoral process.

35. On 12 May, General Avril carried out a new cabinet reshuffle, appointing Mrs. Rose-Marie Nazon, one of his relatives, as Minister of Information, and replacing Mr. Serge Elie Charles by Mr. Yvon Perrier at the Ministry of Foreign Affairs.

36. In May-June, some serious events occurred in the Department of Artibonite, more specifically in the towns of Grand Bois, Ti Bois, third section of the Marchand Dessalines Commune. Peasants attempted to recover land that had been taken away from them during the Duvalier period, and a succession of violent incidents took place throughout the month of May. Despite legal proceedings, it was not possible to find a solution. Mr. Charidieu Joseph, who had grabbed dozens of hectares in that way, even managed to have several peasants arrested and tortured.

37. On 16 May 1989, 13 soldiers proceeded to make arrests without warrants, shooting straight at people with heavy weapons. Two peasants were wounded in the legs, and another, Regis Charlot, was shot dead at point-blank range, while returning from his garden. The crowd, estimated at 2,000 persons, then went to Charidieu Joseph's house, lynched his 80-year-old mother and set the house on fire. Regis Charlot's family was unable to get the police to make a report and had to bury him without one. After the funeral, the family had to flee when military personnel arrived from several barracks, blew up one house and set fire to five others. Specific threats were then made against the peasants of the entire area, terrorizing them, in particular the young people, who were especially singled out.

38. On 2 June, the Military Government brought back into effect article 267-3 of the March 1987 Constitution, which made it possible for military personnel to be tried for offences in the ordinary courts. On 16 June, it enacted the Permanent Electoral Council (CEP) Organization Act. According to the Act, the CEP, a financially autonomous independent public-law institution with legal status, would be made up of a board of directors, a bureau comprising the general inspection and electoral disputes services and a general directorate co-ordinating the activities of an electoral operations office, a data-processing office and an administrative office. The same day, in a message to the nation, General Avril denounced the people who were fomenting insecurity and made an appeal for dialogue and solidarity. He blamed his Government's problems on "professional agitators who have seen fit to make insecurity our poor people's daily bread".

39. It was at that point that Grégory Delpé, a young student, and Ronald Jean Michel were murdered on 5 July 1989. This case, discussed in detail in chapter III on human rights (paras. 69 to 79), aroused the indignation of Haitian public opinion, especially because of the attitude of the police, who attempted to throw suspicion on one of the victim's brothers, Turneb Delpé, a leader of the National Progressive Democratic Party of Haiti (PNDPH). During that month of July, insecurity increased, and, in addition to the death of Grégory Delpé there were the murders of Joanis Malvoisin and the Exantus brothers, accompanied by arson in several villages in Artibonite.

40. During this entire period, the political parties were organizing and holding congresses. At their respective national congresses, the Movement for the Institution of Democracy in Haiti (MIDH), the National Progressive Revolutionary Party of Haiti (PANPRA) and the National Patriotic Movement

of 28 November (MNP28) merged into a National Alliance for Democracy and Progress. The National Committee of the Congress of Democratic Movements (KONAKOM), for its part, held several regional congresses leading to a national congress, and turned itself into a political party.

41. On the anniversary of General Avril's takeover, 11 September 1989, the members of the military who had been removed from the army formed a People's Organization of 17 September (OP17), accusing the Head of State of having betrayed them. Meanwhile, in his anniversary speech, the General declared himself to be "satisfied with the results of this first year" and called on Haitians "to show tolerance and discipline during the elections to be held in 1990". By a decree of 14 September 1989, he established an Office for the Protection of the Citizenry, which would be headed by an official with the title "Citizens' Protector", and whose mission would be to consider cases of human rights violations submitted to him.

42. On 23 September 1989, the Electoral Council submitted the electoral timetable to the Head of State; it was officially published on 24 September. The following were the main stages:

(a) October-December 1989: Setting-up of CEP machinery at the national, departmental and communal levels;

(b) January-March 1990: Census and voter registration;

(c) April 1990: Elections to the Administrative Councils of the Community Sections (CASCE) in three stages;

(d) July 1990: Municipal and legislative elections;

(e) 17 October 1990: First round of presidential elections;

(f) 11 November 1990: Second round of presidential elections.

43. On 27 September, a general strike began, called by 33 political and trade-union organizations. It was well supported in Port-au-Prince, where the principal sectors of activity were paralysed, but to a lesser degree in the provinces. The point was to protest against the insecurity and high cost of living and to demand that the International Monetary Fund measures should be postponed. The 33 organizations formed a "national movement".

44. The representative of the Military Government in the CEP, Joseph Lespérance, sent his colleagues a memorandum indicating a difference of opinion on certain points, in particular the gradual move towards a new dictatorship, the CEP's lack of openness and credibility and the unsatisfactory nature of the electoral timetable. The different political forces expressed their views on the proposed schedule, which a majority of them found too long and too complex. The General Headquarters of the armed forces for its part, distributed a copy of the timetable to all the country's commanders and asked them to provide aid and protection for recognized parties involved in the electoral process and to ensure freedom of assembly and expression, as provided for in the 1987 Constitution.

45. On 5 October, a decree was published with the purpose of limiting "the uncontrolled proliferation of non-governmental development assistance organizations" and "to safeguard national sovereignty and maintain the economic and financial stability of the nation"; it prohibited NGOs from acting "as executing agencies of foreign Governments on the national territory or working with cooperatives without prior authorization": the decree has been strongly criticized by the Association of Haitian Voluntary Organizations (HAVA), which accuses it of not encouraging the formation of Haitian non-governmental organizations and equating non-governmental organizations with government executing agencies.

46. Repression took a very serious turn at the beginning of November with the arrest of three trade-union and political leaders, Jean-Auguste Merzieux, Executive Secretary of the Autonomous Confederation of Haitian Workers (CATH), Evans Paul, leader of the Democratic Unity Confederation (KID) and Marino Etienne, leader of the People's Organization of 17 September (OP17). On 2 November 1989, Major Leopold Clairjeune showed these three men on national television with swollen faces and heads bandaged, showing visible marks of torture. The same day, the house of Mr. Joseph Maxi, President of the Haitian League for Human Rights, was searched; the Presidential Guard was looking for Sergeant Patrick Beauchard. The following day, the army came back and surrounded the house.

47. According to the Ministry of Information, the arrest of the three trade-union and political leaders on 1 November at 5.45 a.m. was associated with "a plan to unleash terrorist activities in order to kill the President of the Military Government, physically eliminate all the officers in the Haitian armed forces, physically eliminate certain prominent civilians and establish a peoples militia". It was reported that arms had been found in their possession. Immediately, a "wanted" notice was issued against Sergeant Beauchard which read as follows:

> "The Criminal Investigation and Anti-gang Service presents its compliments and requests you to give wide publicity, among all citizens of the country to the fact that Franck Patrick Beauchard, former Sergeant in the Presidential Guard, is wanted by the police for 'a crime against the security of the State', an offence punishable under article 63, 64 et seq of the decree of 23 September 1985. Accordingly, all those who have seen the aforesaid Franck Patrick Beauchard in any part of the national territory are requested to notify the police.
>
> Signed Leopold Clairjeune, Haitian Armed Forces, Head of the Criminal Investigation and Anti-gang Service."

48. Haitian public opinion, particularly all the human rights organizations, reacted strongly to the evident marks of torture seen on television. To quote Mr. Maxi, President of the Haitian League for Human Rights: "What happened that evening is an escalation of human rights violations. It is intimidation which clearly reveals the contradiction between the theory advanced by a Government that has just established a body for the protection of citizens' rights and its practice. The Government is intimidating everyone who is prominent in efforts to protect human rights. If such people remain silent, the Government will then turn its attention to all sectors". The protests reached their

height with the general strike launched by CATH "against the return to fascism". Supported by a large number of organizations, it is estimated to have caused a nearly 80 per cent stoppage in the country on 7 and 8 November 1989. Mr. Maxi has been in hiding since 2 November, the date on which his home was searched and pressure put on his family. Similarly, Jean-Baptiste Chavanne, leader of the Papaye Peasant Movement (MPP) was forced to go into hiding after his home at Hinche had been sacked. In spite of action by their lawyers, Jean-Claude Nord and Moise Senatus, the three accused were still being detained on 15 November; on 16 November, they decided to resume a hunger strike in order to draw attention to their state of health and demand their release.

49. On 30 November 1989, three activists of the Union of Progressive Nationalist Democrats (RDNP), Auguste Lorméus, Israel Isophe and Verelt Isophe were murdered at Drouillard, north of Port-au-Prince. The first two were shot and the third was tied to the rear bumper of a car and dragged along until he died. They were preparing posters advocating the return of Leslie Manigat.

50. There were widespread protests, and the response of the Head of State caused surprise. In a speech on 18 November 1989, he stated: "Suddenly a new way of showing one's love for the people consists in keeping the streets of our towns under permanent occupation or forcing people into a routine of weekly strikes, planned not to further anyone's claims but to foster a spirit of strife in a country which so greatly needs hours of work to improve its economy". On 27 November, during his tour in the south of the country, he said that "to stop those who have money from buying the majority of votes, the Haitian people must be able to eat before they go to the polls". During this time, the Provisional Electoral Council was debating the question of a possible change in the electoral timetable and estimated the assistance that the international community should provide at $5 million. At the end of November, the strikes protesting against the detention of Jean-Auguste Mézieux, Evans Paul and Etienne Marino were continuing in Port-au-Prince and in the provinces.

51. The hunger strike by the three political prisoners continuing, support movements multiplied, particularly in the form of a solidarity chain, a symbolic hunger strike of one day. Repression also grew worse. Thus 14 members of the Haitian League of Former Political Prisoners (LAPPH) were arrested on 22 November and charged with "subversion by inciting the population to go on hunger strike in support of three dissidents in detention since 1 November 1989". They were released six days later, the Jacmel Court having declared them innocent of the alleged offences.

II. PRESENT LEGAL FRAMEWORK OF THE HUMAN RIGHTS SITUATION IN HAITI

A. State institutions

52. There has been a development since the report submitted at the forty-fifth session of the Commission (E/CN.4/1990/40). The 1987 Constitution has been in part revived. A decree of 13 March 1989 states in article 1 that: "The 1987 Constitution is hereby revived, with the exception of articles 42-1, 42-2, 42-3, 60-1, 88, 90, 95-1, 111, 111-1, 111-2, 133, 137, 137-1, 143, 149, 150, 155, 158, 159, 160, 166, second paragraph, 169, 171,

185, 202, 228, 267, 267-3, 278-1, 278-2, 279-1, 281, 281-1, 282-1, 283, and 284-3, which are temporarily suspended". Articles 2 and 3 of the same decree provide that the executive power shall continue to be exercised by the President of the Military Government and that the functions of the legislative power shall be provisionally exercised by the executive power.

53. The Government, which General Prosper Avril himself calls "de facto", remains without legitimate title or a solid legal basis. There are still no elections, separation of powers or democratic organization. Furthermore, the articles "suspended" by the Head of State relate to essential provisions about the organization of the State, analysed above; their importance is such that it is difficult to consider this partial revival of the 1987 Constitution really changes the nature of the power exercised by a single man.

54. On 2 June 1989, a new decree revived article 267-3 of the 1987 Constitution "suspended" in March 1989. It restored to civilian judges their competence to try offences committed by members of the armed forces. Power remains concentrated in the person of General Avril, who continues to discharge the functions of government and to legislate by decree, the legality of which is still established by reference to the military coup d'état of September 1988.

55. The indepenedence of the judiciary is still not assured and its powers remain limited, since it has been unable to clear up a single one of the many serious crimes which have been committed during recent years. The statements in the February 1989 report (E/CN.4/1989/40) remain valid in 1990, and no signs of progress have emerged. The Government continues to be a military dictatorship and the human rights situation has again worsened (see section III below), to the point where the existence of any political will to arrive at an electoral process can be seriously questioned.

B. International commitments

56. In December 1989, Haiti was party to many international conventions on human rights both general and regional. 1/

57. We were pleased to note in the previous report that, on the occasion of the fortieth anniversary of the Universal Declaration of Human Rights, General Avril had addressed a message to the peoples of the world and of Haiti, in which he announced Haiti's accession to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, its ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and of the OAS Inter-American Convention to Prevent and Punish Torture, and its signature of the Additional Protocol to the American Convention on Human Rights (E/CN.4/1989/40, paras. 51-53). We feel, however, that the practical consequences of these declarations of intent were meagre and amounted only to a moral undertaking, since the 1987 Constitution was suspended.

58. Article 276-2 of the Constitution, giving international treaties and agreements force of law domestically was indeed restored; but unfortunately the intentions stated in December 1988 have never been put into effect. In fact, a check made in July 1989 before the mission left for Haiti showed that

no instrument of ratification had been deposited with United Nations Headquarters in New York. During our meeting with General Avril on 1 August 1989 we drew his attention to what seemed to us a serious anomaly, since seven months had elapsed since his statements of December 1988 without any action having been taken. General Avril thereupon expressed great surprise, telling us he had felt sure that the former Minister for Foreign Affairs, Mr. Charles, had deposited the instruments of ratification. He assured us that he would take up the matter personally and see to it that the necessary action was taken as quickly as possible.

59. By the end of December 1989, that is to say almost five months after our meeting with the Haitian Head of State, no more had been made towards ratification. This significant but not isolated instance cannot but raise a question mark about General Avril's genuine desire for change. To announce a series of ratifications in December 1988 but not to sign any of them, despite promptings by the representative of the Commission on Human Rights, is hardly encouraging. Might not the Head of State's aim be, first and foremost, to secure a significant resumption of international assistance so as to enable him to establish his régime on a firm basis? That question is worth asking also in view of the ponderous and complex nature of the electoral system proposed by the Provisional Electoral Council.

III. PRESENT HUMAN RIGHTS SITUATION IN HAITI

60. The report submitted to the Commission at its forty-fifth session briefly reviewed the human rights violations and institutionalized repression under the régime of François Duvalier and, later of his son Jean-Claude. It went on to detail the most notorious facts concerning assassinations, massacres, torture and disappearances between February 1986 and December 1988. How has the situation evolved during the past year?

A. Principal violations of human rights

61. The essential feature of this period is a gradual but steady rise in insecurity, characterized by crimes of violence, acts of lawlessness, arbitrary arrests and burglaries. Shops are looted and peasants' properties destroyed without the police or the army taking any particular action. Houses and schools are burgled in broad daylight, women are abducted and then raped, while the Government's reaction is confined to declarations of principle about the need to end the insecurity. Nor do the courts evince any greater effectiveness or willingness to pursue the cases brought before them. The most adverse consequence is to be seen in the Haitian people's loss of trust in the institutions that are supposed to protect them and in the tendency to substitute private, summary and blind justice for due legal process.

62. It is often hard to draw the line between what is simply an ordinary crime, frequently the result of poverty or hunger, excesses on the part of undisciplined section heads or armed gangs, and crime which is really political in nature. But not a day goes by without one or more arbitrary arrests, one or more murders and one or more acts of vandalism. For example, on 6 February, the engineer Rockfeller Guerre, President of the Union of Democratic Patriots (UPD), was arrested without a warrant at Delmas 19, Port-au-Prince, by officers of the Port-au-Prince police. His arrest was said to be in connection with an inquiry being conducted into an explosion the previous night on the route of the carnival procession.

63. The following day, 7 February, another political leader, Sylvain Jolibois, was arrested without a warrant in Port-au-Prince by police officers, likewise on the charge of being among those responsible for the explosion on 5 February on the Champ-de-Mars. At Labadie, the third rural section of Petite Rivière de L'Artibonite, five persons armed with machetes entered the school run by the Labadie youth movement on 17 February 1989, assaulted the teachers and pupils and took away some of the school equipment.

64. Many peasants have had to flee their villages and take refuge in towns because of increased repression by section heads and their assistants. The rural police often mount actual punitive expeditions when their deeds are denounced on the radio, but the judicial authorities take no steps to put an end to such practices, for all that the victims report them. But if the perpetrators of murders or robberies are not apprehended, political militants, on the other hand, are harassed frequently. Thus, for example, on 4 March 1989 many districts of Port-au-Prince were searched by several units of the army without the public ever being given any reason for this operation. The houses of two political leaders, Turnep Delpé (PNDPH) and Rockfeller Guerre (UPD), were searched from top to bottom. One hundred and twenty-three persons were said to have been arrested during these operations, but not one name has been released by the authorities.

65. Then came the attempted military coup d'etat of 1 April, already referred to (see para. 27). Its true cost in human life has never been revealed, but a number of hard facts, whether connected with the coup d'etat or not can be cited:

(a) On 2 April, at Delmas 19, Port-au-Prince, solders fired a number of shots and killed a seven-year-old girl known by the name of Magali;

(b) On 4 April, on the Avenue Martin-Luther-King in Port-au-Prince, an armed man in olive-green uniform shot a money changer, Justin Ocanne, twice through the head, killing him, and robbed him of 2,500 gourdes. The same day, on the Delmas motorway, there was a clash between soldiers of the Presidential Guard and the Leopard Corps; four Leopards were killed, three were wounded, and some 15 arrests were made;

(c) On 4 and 5 April the instigators of the coup d'état - Colonels Himmler Rébu, Philippe Biambi and Léonce Qualo - were deported. A state of emergency was decreed throughout the country with a curfew from 7 p.m. to 5 a.m. Press censorship was established. Clashes between Leopards and Presidential Guards continued in the capital and many civilians were hit by bullets;

(d) On 6 April, several more civilians were wounded. Four radio stations - Radio Haiti Inter, Radio Métropole, Radio Antilles internationale and Radio Liberté - were partly destroyed by armed men in olive-green uniform. On 7 April, the premises of Radio Soleil were occupied by soldiers from the Dessalines barracks, and on 8 April more civilians were injured;

(e) On 9 April, Lilianne Laloi was killed in the Avenue de Bolosse by a grenade thrown by persons unknown, and Jean Fortuné, a soldier of the Presidential Guard, was killed at Cité Soleil-Delmas by three persons in olive-green uniform;

(f) On the night of 9-10 April, three armed men entered the premises of Radio Soleil, despite the curfew, fired a number of shots and made off with a large sum of money;

(g) On 10, 11 and 12 April, persons in uniform committed a number of burglaries (in a service station and a ministry) and injured civilians;

(h) Throughout the month of April, bodies were being discovered and unlawful arrests continued. To give but one example, at Cité Soleil, Port-au-Prince, at 4 o'clock on the morning of 26 April, the police arrested 23 members of a self-defence brigade, accusing them of having murdered an unknown person, whereas the police had not intervened previously to deal with the very gangs of muggers who had driven the population to form self-defence groups.

66. During the months of May and June, insecurity continued to escalate and armed gangs, in civilian clothing or in uniform, barefaced or masked, carried out all manner of extortions. Citizens formed themselves increasingly into self-defence groups, and incidents were inevitable: a number of lynchings took place, which nothing can justify, but the slackness of the police and the judicial authorities can at least help to explain.

67. As was pointed out in a bulletin by the Haitian Centre for Rights and Freedoms (CHADEL): "It is urgently necessary that the Government of the Republic should proceed to establish a modern police force independent of the Haitian army, thoroughly reform the national judicial system and do away with the institutional arrangements which exempt the Haitian military from the rule of justice and law".

68. There were killings by the dozen in Port-au-Prince and the provinces during the months of May and June 1989. But in July the repression was to reach new heights, with the murders of the young Grégory Delpé in Port-au-Prince, Jaonis Malvoisin and the Exantus brothers and arson in several villages in Artibonite. A wave of terror was unquestionably taking place and is still continuing, as we shall see. The aims and the perpetrators are difficult to establish, one reason being that no serious effort is being made to identify them; but it cannot but be noted that the continued insecurity bodes ill for the establishment of a genuine electoral process as a transition to democracy. It is worth expanding somewhat on the matter of the murder of Grégory Delpé, since it is representative of a certain kind of intimidation being exercised against political opponents.

<u>The Grégory Delpé case</u>

69. On the night of 5-6 July 1989, a young student, Grégory Delpé, was shot dead by individuals who had entered the home of his parents in Port-au-Prince. After shooting Grégory Delpé, the murderers threatened to kill others in the flat if they did not give them their money and then menaced Grégory's brother, Turneb Delpé, Secretary of the National Progressive Democratic Party of Haiti (PNDPH), accusing him of having interfered with the work of the Government. They made off with $4,000 in cash.

70. We conducted a quite detailed on-site investigation of this case and interviewed all the human rights defence organizations, representatives of a number of ministries and the Head of State himself. At the request of the

Delpé family, we visited the scene of the murder and spoke at length with the victim's father and mother and several of his brothers and sisters, in particular Turneb Delpé.

71. According to the detailed version given by the family, six persons were present in the flat at the time of the events: the father and the mother, Grégory, who had gone to bed, and three brothers and sisters, including Turneb. All the children, eight in number, were university students or professionals. Grégory was studying to become an electronics engineer; he also taught physics at the Saint-Louis de Gonzague College and was a member of the National Federation of Haitian Students (FENEH).

72. According to Turneb Delpé, at around 2 a.m. on 6 July, he was rudely awakened by the sound of his mother speaking with a number of people; his father then woke up and began to shout. "One of the men was armed", he told us. "Grégory came out of his room while the other man who was hooded, was going through the three rooms ... then the man fired a shot". They had entered through a shed on the ground floor and seemed to know their way around. After killing Grégory, they stayed in the house for 30 minutes, threatening the entire family and saying to Turneb: "You are interfering with the work of the Government", and they robbed the family of the shop takings. They forced the family to lie down on the floor, their hands on their heads, and then they departed by car, leaving all the doors open. The padlocks had been forced, and the family found a candle and an iron bar in the grocer's shop. Then they called the police, who came and produced a report with a justice of the peace.

73. The police removed the body at 5 a.m, returned to ask some questions at 10.30 and continued their questioning for two days, refusing to take the padlock found on the premises. Two days later, the investigators, together with Antonin Augustin, the Chief of Police, and Major Léopold Clairjeune, the Head of the Anti-Gang Brigade, unexpectedly held a press conference on national television. Most surprising of all was what they actually said at that press conference. They claimed essentially that: the statements made by the Delpé family were suspicious; there was virtually no blood at the scene; the family had arranged to have the body removed from the morgue unbeknown to the police; there was a bullet hole in Grégory Delpé's room; the cartridge found did not smell of gunpowder; if Grégory had not left his room, he would not be dead; there was no evidence of forced entry; and the murderers did not enter the girl's room.

74. Ten minutes after the press conference, two policemen, a Prosecutor of the Republic, a magistrate and a photographer returned to the scene of the crime; photographs were taken in the room. The Chief of Police then claimed not to know about the press conference. They wanted to arrest Turneb Delpé, but eventually decided not to. Several minutes after the departure of these investigators, shots were fired at the building.

75. On Monday (the day after the press conference), the Delpé family also held a press conference to reply to each of the allegations made by the police. It should be pointed out that no fingerprints were taken at the scene of the crime. Later, the police summoned the family again and sought to level various accusations against them, maintaining in particular that the body bore signs of bruises. "If there are bruises, it is up to the police to give us an explanation", said the family.

76. The police then attempted to spread various rumours about the Delpé family, and in particular about Turneb Delpé, the police chief even put pressure on him and one of his lawyers, Mr. Nord, to make a statement that the death had been accidental. In August, the public inquiry had not yet been opened, even though the case had already been brought before the Prosecutor of the Republic.

77. In perhaps one of the most surprising developments, General Avril insisted on giving us the official police version during an interview on 1 August 1989. According to him, the case is very suspicious and the police are sceptical. He supported all the points made by the Chief of Police at the press conference, going into great detail: the fact that the traces of blood had been wiped away too fast, that the cloth used to wipe away the blood had vanished, and that bruises were found on the body which, according to him, were the result of the murderer having trodden on it. It is astounding that a Head of State should devote such attention to a case which is otherwise being presented as a perfectly ordinary crime, with the implication that members of the family are involved.

78. The events of November 1989 saw a new deterioration in the human rights situation. Shortly before 6 a.m. on 1 November, soldiers of the Presidential Guard arrested Jean-Auguste Mersieux from the headquarters of the Autonomous Confederation of Haitian Workers (CATH), Evans Paul of the Democratic Unity Confederation (KID) and Marino Etienne of the People's Organization of 17 September (OP 17), accusing them of plotting to assassinate the President of the Military Government and a number of officers. The suspects were brutally beaten and tortured before being turned over to the Criminal Investigation Service in Port-au-Prince. At 6.30 p.m. on the same day, soldiers of the Presidential Guard forced their way into the home of Mr. Joseph Maxi, a lawyer and President of the Haitian League for Human Rights; they were looking for Sergeant Patrick Beauchard.

79. On 2 November, illegal searches were undertaken at the homes of several members of the National Progressive Revolutionary Party of Haiti (PANPRA), including Dully Brutus, a member of the central committee. The same day, Major Léopold Clairjeune, head of the Criminal Investigation Service in Port-au-Prince, presented the three arrested persons before the television cameras, who bore very visible signs of beating, ill-treatment and torture, and displayed weapons that allegedly had been found in their possession. The photographs of the swollen faces of these three persons were given wide coverage by the international press. The same day, the Port-au-Prince police published a communiqué with the names of those involved in the plot and announced that they would be actively prosecuted.

80. On 9 November, a search was undertaken at the farm of Papaye, near Hinche, the headquarters of the Peasant Movement of Papaye (MPP); the squad of soldiers threatened and mistreated a group of 40 persons who were attending a community training seminar and intimidated the entire village; then, at Hinche, they broke up into groups of six and went through the town, firing their weapons in the air and terrorizing the population.

81. At the National Penitentiary, the three detainees arrested on 1 November began a hunger strike that was to last until 11 December. They refused all care, their aim being to get themselves transferred to a hospital that could provide them with the treatment their condition required. A number of

citizens also started "rotating" hunger strikes to protest against their imprisonment and against the accusations levelled at two members of the Association of Haitian Doctors, who, according to the military, were guilty of professional malpractice in the treatment of the three. The state of health of these prisoners has greatly deteriorated. The rights of the defence could not be exercised properly, because the accused could not communicate freely with their lawyers. On 15 December 1989, the decision was taken to refer the case to a criminal court, the three having still received no medical care.

82. The Haitian League for Human Rights pointed out a number of irregularities in the procedure followed: arrest in a private house after 6 p.m. without a warrant and in the absence of a report establishing that they had been caught in flagrante delicto; the local inhabitants were reported to have said on the radio that weapons had been put in the car of the persons arrested by the soldiers who had carried out the arrest. The three detainees were reportedly struck in public at the scene of their arrest; they were not transferred to the military hospital until 17 November, and their private doctors were not authorized to see them until 19 November. Owing to various obstacles, the visits had to cease on 23 November. According to a diagnosis on 11 December, one of the detainees had six broken ribs, which had caused a major injury to his lungs; the second had lost the use of one eye and was partially deaf; the third had heart trouble and hip injuries and suffered from fits of faintness.

83. On 13 November, Auguste Lorméus, Israël Isophe and Verelt Isophe, members of the Union of Progressive and Nationalist Democrats (RDNP) were murdered in Drouillard, north of Port-au-Prince, by armed civilians, under circumstances already described above (see para. 49), while they were preparing posters calling for the return of Leslie Manigat.

84. At the same time, the repression is affecting a number of human rights organizations, such as the League of Former Political Prisoners (LAPPH) and the League for Human Rights, whose Chairman, Mr. Joseph Maxi, has been forced by harassment into virtual hiding; workers' organizations and trade unions are also affected, namely CATH and MPP, whose leader, Jean-Baptiste Chavanne, has also been obliged to live in hiding since a summons was issued against him on 17 November 1989 by the Prosecutor of the Republic of the Civil Court of Hinche.

85. A section of Haitian public opinion is concerned about the growth of what it regards as a campaign of intimidation against civilian society, a campaign whose aims are unclear but which may have serious consequences for the organization of free elections. At the same time, the Human Rights Commission of the Organization of American States (OAS) presented a report in Washington on 16 November 1989 in which it stated, in particular, that "the Haitian military establishment wants to seize power by engaging in acts of repression and has been taking anti-democratic measures for the last year".

B. Responsibility for violations and government investigations, up to December 1989

86. In the past year there have been several changes of ministers and officials in the administration, in particular in the Ministry of Foreign Affairs and the Ministry of Justice, and in the Presidency of the Court of Cassation. Two military units have been disbanded, the Dessalines barracks unit and the Leopard Corps, but only because of the role played by those units in the attempted coup d'état on 1 April 1989.

87. The judicial authorities are still not playing their part in the investigation and punishment of the serious human rights violations that occurred both in the Duvalier period and from February 1986 to 17 September 1988, the date of General Avril's coup d'état, or indeed after the present Head of State came to power. There has yet to be any serious investigation of the cases of torture, ill-treatment and arbitrary detention.

88. In that respect, the year 1988 ended badly, with the authorization issued by General Avril for the departure of Franck Romain to the Dominican Republic. Since he was liable to prosecution for his part in the massacre in the Church of Saint-Jean-Bosco in September 1988, the laissez-passer issued to him for Santo Domingo shocked public opinion. Admittedly, the official communiqué did state that his departure had no implications for the legal proceedings against him, and that in due course a request for extradition might be submitted to the authorities in the Dominican Republic. The Government of Mr. Balaguer has indicated in a recent statement that it did not intend to extradite Franck Romain. There have nevertheless been some dismissals from the army, unconnected with the coup d'état, but rather on grounds of extortion or, more frequently, for drug trafficking.

89. The Commission of Enquiry into the 29 November 1987 massacre has not actually been set up, and the investigation into the circumstances has thus made no progress. The inability of the forces of law and order to deal with insecurity or human rights violations was acknowledged by the Government itself, and the Minister of the Interior and the Armed Forces, Mr. Acédius Saint-Louis, stated in an interview on 7 September 1989 that "the forces of law and order are not psychologically or materially prepared to confront the prevailing lack of security in the country".

90. On 29 September 1989, the Government announced the establishment of an independent public body which will be responsible for prison administration. Under the supervision of the Ministry of Justice, this body, the National Prison Administration (APENA), "has as its purpose the introduction and implementation of all relevant legislation in the national territory, and to ensure, in accordance with the Ministry's instructions, the execution of all judicial decisions imposing a prison sentence or ordering detention". It is premature to conclude that the establishment of this body will have any effect on the arrest and trial of criminals, and the execution of any sentences imposed on them. However, it may be noted that a dozen military personnel implicated in serious offences (armed robbery, drug trafficking) have been discharged from the armed forces and handed over to the judicial authorities, according to a communiqué issued by the Ministry of Information on 3 October 1989.

91. State control over section heads in rural areas has not increased and, while some have been dismissed, others continue to engage in extortion, particularly in the Artibonite, Labadie and Central Plateau regions. They are insisting, for example, that meetings of workers' or peasants' groups should be held in their presence or under the supervision of a soldier; they are responsible for arbitrary arrests and beatings, not to mention still more serious acts. While repression has been on the increase for some weeks, there is nothing to show that government forces are directly involved. At the same time, it seems that nothing is being done to end it, or to arrest those responsible and bring them to trial.

IV. MISSION TO HAITI AND SUBSEQUENT ACTIVITIES

92. The Expert undertook a mission to Haiti, accompanied by an official from the Centre for Human Rights in Geneva, from 25 July to 3 August 1989, with the aim of renewing contact with the authorities in the country and with democratic forces and non-governmental organizations, monitoring developments, and assessing the development in the human rights situation since his first visit to Haiti in December 1988. The purpose was also to offer specific assistance to the Government in the field of human rights and the electoral process.

93. At the government level, the Expert had talks with General Prosper Avril, the Head of State, Mr. A. Romain Cemé, the Minister of Justice, Mr. Yvon Perrier, the Minister for Foreign Affairs, and Mr. Acédius Saint-Louis, the Minister of the Interior and the Armed Forces. He also met the Chairman of the Permanent Electoral Council, Mr. L.A. Auguste, who was accompanied by five members of the Council, and had a long discussion with the President of the Court of Cassation, Mr. Austin, a former Minister of Justice, followed by a meeting with all the members of the Court of Cassation. The Expert was also able to have talks with various representatives of the Catholic Church: Mr. Joseph Lofontant, Secretary of the Episcopal Conference, and Father Aristide. In addition, he went to Cap-Haïtien to talk with Monsignor François Gaillot, President of the Episcopal Conference. A number of meetings were held with representatives of the diplomatic world: Mr. Guigerre, the Canadian Ambassador, together with a number of counsellors from the Embassy, Mr. Dufour, the French Ambassador, Mr. Watson and Mr. Kashkett, First Counsellor and Counsellor respectively at the United States Embassy, and Mr. Brengelmann, the Chargé d'affaires of the Federal Republic of Germany.

94. Meetings or talks were also held with democratic leaders and political figures: Mr. Marc Bazin, Movement for the Institution of Democracy in Haiti (MIDH); Mr. Serge Gilles, Mr. Dully Brutus and almost the entire national bureau of the National Progressive Revolutionary Party of Haiti (PANPRA); and Mr. Victor Benoit of the National Committee of the Congress of Democratic Movements (KONAKOM), which had recently become a political party. At the first regional congress of that organization, which was held at Jacmel on 31 July 1989, the Expert had the opportunity to meet a number of its leading national and regional figures and to note the serious way it was setting about its work; Mr. Gourgues, Co-operation Front; Mr. Max Bourjolly, United Haitian Communist Party (PUCH); and a delegation consisting of Mr. Abel Leger, Mr. Charles Millery and Mr. Max Mollant from the National Agricultural and Industrial Party (PAIN). The Expert also gathered information from most of the human rights defence organizations: the Haitian League for Human Rights (Mr. Joseph Maxi, Mr. Jean-Claude Nord); the Ecumenical Human Rights Centre (Mr. Jean-Claude Bajeux, Mr. Jacinthe Sorel and Mr. Moïse Sanatus, the last of whom has just established a lawyers' collective for the defence of political prisoners, peasants and the victims of human rights violations); the Haitian Centre for the Defence of Civil Liberties (CHADEL) (Mr. Jean-Jacques Honorat); the Haitian League of Former Political Prisoners (Mr. Robert Duval); and the Ecumenical Mutual Aid Service (Mr. Daniel Henrys and Mr. Dully Brutus).

95. He also visited the scene of the murder of Grégory Delpé. There he was able to examine the circumstances of the crime on the spot, and to talk to all members of the family. He also met various officials from workers', peasants'

and trade-union organizations, including Mr. Armand Pierre and Mr. Joseph Monicy Pierre (CATH), Mr. Serge Desroches of the Labadie Youth Movement, and a number of radio or newspaper journalists (Radio Métropole, Haiti solidarité international). Various informal meetings were also held with leading Haitian and foreign personalities; the Expert also had talks with prominent Haitians living in France or passing through France.

96. Finally, mention should be made of the valuable assistance extended to us by the Resident Representative of the United Nations Development Programme and, in his absence, by his deputy and the entire UNDP mission. All of them greatly facilitated the numerous contacts we were able to make, and placed at our disposal all the technical resources of the mission in Port-au-Prince. We take this opportunity to thank them. The Expert has followed up the work carried out during the mission by examining a large number of documents, of both governmental and non-governmental origin, received over the year from Port-au-Prince, New York or Geneva. All this material together constitutes the basis of this report, and it will therefore not be recapitulated, but rather used, as with the last report, to sum up the general impression regarding the current situation and the conclusions drawn by the Expert.

97. The country's economic and social situation has not improved, and the poverty of a large part of the population, already stressed in the report submitted in 1989, has not only not diminished, but on the contrary has been tending to worsen in recent months. The seriousness of the situation can be grasped if it is borne in mind that, for example, in the poorest districts of Port-au-Prince, living space is 2 m^2 per person, that 90 per cent of the population in these districts have only one room to live in, that there were more than 200,000 homeless in 1988, that drinking-water or electricity is very frequently lacking in these shanty-towns, that malnutrition affects many strata of the population, and that infectious diseases are rampant (almost 45 per cent of deaths from natural causes).

98. Incomes declined each year from 1984 to 1988, and the situation is even graver in the countryside, where 80 per cent of the population lives. There is a widening ecological disaster resulting from deforestation. Malnutrition, according to figures from the Agency for International Development (AID) affects three children out of four, and is responsible for almost 90 per cent of infant mortality. The unemployment rate is in the region of 60 per cent.

99. The phenomenon of emigration in all its forms, and in particular its most dramatic manifestation, the "boat people", has unfortunately not ceased. Several times each month boats carrying people who are trying to escape from poverty are intercepted on the high seas or off the American coasts. Various sources agree in estimating that more than a million Haitians are living abroad, some 500,000 of them in the United States and between 300,000 and 400,000 in the Dominican Republic. However, most of these vessels are now intercepted and their occupants repatriated to Haiti. It is stated that 18,498 Haitians were arrested between September 1981 and 1989, most of them in international waters, and repatriated. Their boats (281) were for the most part sunk, and less than 150 persons were admitted to the United States. In 1988, 4,712 Haitians were repatriated, while the figure for the first four months of 1989 was 2,430. The situation is evidently worsening. Canada seems to be anxious to embark on a similar policy to the United States, and is

threatening to expel several hundred Haitians. It is contemplating denying political asylum to Haitians, on the grounds that the situation in the country is "fairly calm". This view of the state of affairs seems optimistic, to say the least.

100. The trend in the economic situation is disquieting, and can only be altered through a firm political will to change it, through a permanent end to all corruption, supervised use of substantial international assistance, a genuine return to democracy by means of the prompt organization of elections, an end to the serious violations of human rights, and the identification, arrest and trial of those guilty of the most serious violations.

101. The 1989 report indicated that the political situation since February 1986 had been marked by very great instability. At the time of the Expert's first mission in 1988, General Avril's Government gave the impression of vacillating between a coalition with the Duvalier forces and one with the democratic organizations. This indecision gave no reason to hope for a more permanent move towards democracy. It must be stated that instability is still the rule: the attempted coup d'état of 1 April 1989 is the prime example. In particular, it resulted in the destabilization of part of the army, with the disbanding of the Leopard Corps and the Dessalines barracks unit and the strengthening - real or supposed - of the Presidential Guard. There are constant rumours of a coup d'état, although it is not always possible to establish whether these rumours have any serious foundation. At all events, the recent increase in tension and repression is often said to be justified by plots against the Head of State (Sergeant Beauchard, or the three arrests on 1 November 1989). Since the judicial authorities have so far proved unable to pursue their investigations to the extent of holding a public hearing, it is impossible to determine the facts regarding the supposed plots. The Commission of Inquiry set up at the end of November 1988 in connection with the massacre of 29 November 1987 has never, in fact, come into being. The State, which is responsible for finding out the truth and for punishing those responsible, has not fulfilled its task and has indeed allowed a number of those thought to be responsible to flee, one of them being Franck Romain.

102. The assertion in the 1989 report that the judiciary does not play its role in Haiti, either out of incompetence, or lack of will or independence, owing to its links with Duvalierism, or even out of corruption, remains valid. It is striking to note that the judges of the Court of Cassation, to whom the Expert proposed the organization of a seminar on human rights, could see absolutely no need for such a seminar, indicating that the Centre for Human Rights could not do anything for them. They were unconcerned by the Commission of Inquiry, which is answerable to the Ministry of Justice, or by the fact that all the atrocities in recent years have gone unpunished, a circumstance which they largely explain by the failure of the victims or their families to come forward with complaints. They regard themselves as independent of the Executive, and have absolutely no feeling of any kind of responsibility on the part of the judicial authorities. In such conditions, is it possible to go on offering advisory services to people who do not want them?

103. Can confidence still be placed in a Government which, in December 1988, announced the ratification of a number of international covenants, but which had still failed to ratify them by the end of 1989? With regard to elections,

is it not a matter for surprise that when the coup d'état took place on 17 September 1988, they had still not been organized by 1 January 1990? Admittedly, a Permanent Electoral Council had been established, and had met and organized wide-ranging consultations with most of the country's political movements; indeed, in September 1989 it published a time-table for elections, but many causes for concern remain:

(a) The complexity of the electoral machinery and the length of the electoral process;

(b) A hesitant attitude towards international assistance in connection with the elections;

(c) Dissension within the Permanent Electoral Council, to which the press has referred in recent weeks;

(d) Renewed violence and violations of human rights, which are unlikely to encourage the population to turn out to vote;

(e) Certain statements by the Head of State indicating, for example, on 27 November 1989 that "the Haitian people must be able to eat before they go to the polls".

104. The question of maintaining an Expert and advisory services can thus be put in the following terms: ought one to go on offering advisory services to a Government which does not want them? For example, in the course of a discussion we asked the Minister for Foreign Affairs, Mr. Yvon Perrier, to think about the possibility of technical assistance in the form of experts to give training in prison administration and "human rights administration": the improvement of detention centres, assistance in establishing a school to train members of the judiciary, fellowships for further training for police officials and members of the judiciary, and also refresher seminars. He was supposed to draw up a formal request with a short- and long-term programme but has never done so. The Centre for Human Rights has not received any request from the Government. The same can be said of the Minister of Justice.

105. A perhaps still more ambiguous impression emerged from the interview with General Prosper Avril, who considers that he has made considerable progress in improving respect for human rights. In particular, he regards it as important that the coup d'état of 1-2 April was resolved "without reprisals", but acknowledges that there are still problems in the provinces. He was unwilling to give a decision on our suggestion that United Nations observers should be asked to provide technical assistance in preparing and holding elections, as had been the case in Nicaragua, for example; he preferred to wait until the Permanent Electoral Council made progress in its work, and feared a reaction on the part of the population, which might regard such assistance as an infringement of national sovereignty. The Permanent Electoral Council, for its part, had not shown itself hostile to the presence of observers. However, on this point too, the Government has submitted no formal request to the Centre for Human Rights or to United Nations Headquarters. It was made clear to us that there would be no real participation unless the international community first assisted the Government of Haiti in creating jobs so that the people were in a position to go to the polls. In his view, assistance should precede the holding of elections, and not vice versa.

V. CONCLUSIONS

106. The general conclusions from the study on the human rights situation in Haiti, on the institutional framework and international commitments are to be found in chapters II and III, and can be summed up as follows:

(a) The effort, apparent in the early months of General Avril's Government, to give the international community an indication of its awareness of the need to ensure respect for human rights remains inadequate, and has even dwindled since July 1989;

(b) The commitment of December 1988 to ratify the international human rights conventions has not so far been honoured;

(c) The Government and the judicial authorities have still not taken effective measures to investigate past and present violations of human rights and to bring those responsible to justice;

(d) They have still not succeeded in preventing further frequent violations in the towns and, still more so in rural areas, where the section heads often commit abuses of authority with impunity;

(e) The obstacles hindering the process of real improvement in the human rights situation in Haiti have not been removed; these obstacles are as follows: (i) an ineffective judicial system; (ii) the militarization of the rural areas; (iii) the failure to separate the army and the police forces; and (iv) the fact that those responsible for the principal massacres, in particular those on 29 November 1987 and 11 September 1988, have not been put on trial;

(f) The military and economic power of the paramilitary forces has undoubtedly diminished inside the country, but not all have been disarmed, and many have taken refuge in the Dominican Republic, from which they are in a position to make incursions into Haiti with impunity;

(g) The Government still has no basis in law, although it has restored the 1987 Constitution in part, and still cannot rely on lasting support from the country's democratic forces. It should restore the Constitution in toto;

(h) The electoral process should now be speedily organized, with measures to safeguard citizens' physical safety and freedom to vote as they wish, so that they can take their country's future in hand forthwith;

(i) The situation as regards respect for economic, social and cultural rights is becoming more alarming day by day, and no serious effort has been made to remedy it;

(j) The improvement that followed in the first few months after 17 September 1988 seems to have come to a halt, and the extremely negative factors which remain lead me to take a pessimistic view of the situation, which cannot change without a more positive and consistent will to ensure respect for the minimum standards of the rule of law.

VI. RECOMMENDATIONS

107. In conformity with his mandate under resolutions 1987/13 and 1988/51 of the Commission on Human Rights, the Expert submits the following recommendations:

(a) It is essential for the Commission to continue to monitor the human rights situation in Haiti, with a view to fostering a real process of improvement;

(b) It is advisable for the Commission to express deep concern at the continued deterioration in the situation regarding human rights and fundamental freedoms;

(c) In view of the events that have occurred since its forty-fifth session, it is desirable for the Commission to take note of the fact that no advisory service has been requested by the Haitian Government, despite the specific proposals made to it; and for it accordingly to consider the possibility of appointing a special rapporteur to study the situation of human rights and fundamental freedoms in Haiti and report on the subject;

(d) In addition, the Commission should consider whether it is appropriate to go on offering advisory services through the Secretary-General when the Haitian Government does not submit any specific request and when there has been no notable progress in the current situation in Haiti since the forty-fifth session:

(e) If the Commission were to consider extending the Expert's mission, it would have to establish a scheme to provide technical assistance in connection with the electoral process by sending observers before and during the elections, if they are to be held;

(f) The other recommendations submitted in the 1989 report (E/CN.4/1989/40, para. 139), which are reproduced below, should only be considered if the Haitian Government is prepared to make specific requests. The recommendations relate to: strengthening and improving the judiciary to enable it to fulfil its mission with complete independence; support for planning a general policy regarding development and assistance for the poorest communities; and specific technical assistance in matters pertaining to the police, so as to foster the organization of civilian police services trained in human rights and in the minimum standards for maintaining order.

108. These are the recommendations submitted by the Expert as a result of his second mission to Haiti. He considers it worthwhile to pursue the dialogue with the present Government of Haiti, provided that it is prepared to accept genuine advisory services, primarily for the purpose of organizing the elections. If such a wish is not expressed, it would seem preferable to appoint a special rapporteur, since no real progress can be said to have been achieved over the year, and there is no certainty that elections will be held.

Note

1/ As regards the human rights conventions adopted by the United Nations, Haiti had ratified the following conventions: the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention on the Suppression and Punishment of the Crime of Apartheid; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Prevention and Punishment of the Crime of Genocide; the Slavery Convention; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the Convention relating to the Status of Refugees; the Protocol relating to the Status of Refugees; and the Convention on the Political Rights of Women.

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ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Report by the Expert, Mr. Philippe Texier, on Haiti, prepared in accordance with Commission resolution 1989/73

ADDENDUM

1. On 20 January 1990, public opinion throughout the world learned that General Prosper Avril had just issued two decrees suspending several articles of the 1987 Constitution, introducing a 30-day state of siege and requiring Haitians who wished to leave or enter the country to obtain a visa.

2. Shortly before these measures were announced, information was also received concerning a series of extremely brutal arrests. Censorship of the radio and press was immediately imposed, and only television was allowed to broadcast news.

3. The democratic sector as a whole, opposition parties and certain human rights bodies were affected by a wave of mostly unlawful arrests, whose clear objective was to terrorize the country's democratic forces.

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4. The following persons were arrested: Serge Gilles, Georges Verleigh, Philippe Stephenson and Yves Duval, leaders of the Haitian Progressive Revolutionary Nationalist Party (PAMPRA), a member of the Socialist International, together with a pastor, Jackson Noël, all of whom were at the home of Serge Gilles. The circumstances of these arrests are described below.

5. On 20 January 1990 six heavily armed persons in civilian clothes entered the home of Serge Gilles without a warrant but with weapons drawn, threw him to the ground and kicked him several times in the stomach while insulting him, in front of his wife and two young children. They then ransacked several rooms in the house before again kicking Mr. Gilles, handcuffing him and dragging him out, while threatening all the members of PAMPRA.

6. All those present were thrown to the ground, hit with an ashtray and kicked. They were then handcuffed and taken to vehicles belonging to the Inland Revenue, parked in front of the house. Haby Brun, a leader of KONAKOM and Gesner Prudent, who had also been ill-treated, were already in one of the vehicles. (It should be mentioned that Haby Brun, who had clearly been tortured, had undergone an operation a few days previously and was already in poor physical condition.)

7. During the journey the perpetrators of these acts asked Serge Gilles to take them to the homes of Duly Brutus and Arnold Antonin, members of PAMPRA's Executive Secretariat, but he refused to do so.

8. These political figures were then taken to the presidential palace where they were beaten and insulted by a number of soldiers, who mocked their determination to organize democratic elections. Serge Gilles received a violent blow to the ear which burst his left ear-drum. Georges Verleigh was wounded in the head by a blow from a rifle butt; a corporal then intervened to stop the violence.

9. All the persons concerned were then taken to the premises of the anti-gang brigade where they were treated properly and where Major Clerjeune apologized to them. Apologies were also offered by Colonel Romulus, the police chief, and they were then taken back to their homes.

10. Dozens of political opponents were arrested: some of them were released quite quickly, others were imprisoned and yet others expelled from Haiti against their will. For example, Hubert de Ronceray, President of the centrist Mobilization for National Development party (MDN) was expelled to Miami. On Sunday 21 January, Max Bourjolly, deputy leader of the Unified Haitian Communist Party (PUC) was arrested and immediately expelled to Guadeloupe.

11. In all approximately 40 political figures were arrested on 20 and 21 January, including 74-year old Dr. Louis Roy, a person greatly respected by all Haitians and regarded as the father of the 1987 Constitution, who was expelled to the United States of America.

12. E. Prudent, a leader of the Movement for the Establishment of Haitian Democracy (MIDH) was also arrested, as was Dr. Sylvain Jolibois (a member of Rockefeller Guerre's UPN) who refused to allow himself to be expelled and has

remained in detention. Similarly, Dr. Robert Jean-Louis, President of the Association of Haitian Doctors and his wife and Robert Duval, leader of the Association of Former Political Prisoners and his wife fled after military personnel failed to find them at home. Gérald Emile Brun, a member of the National Committee of the Congress of Democratic Movements (KONAKOM) and an official of the Ecumenical Centre for Human Rights, was arrested, tortured and deported. Twenty-eight members of KONAKOM were arrested and tortured before being released.

13. Most leaders of political parties, even the most moderate, have had to leave their homes and are still in hiding.

14. The pretext for these exceptional measures and the wave of arrests was the assassination, on 20 January at dawn, of Lieutenant Colonel André Neptune, an officer in the Presidential Guard responsible for distributing bonuses to soldiers, who was killed together with his wife and a domestic employee, in still unelucidated circumstances.

15. Political leaders who were abroad, such as Victor Benoit (KONAKOM), Louis Dejoie and Jean-Claude Bajeux, are uncertain whether they can return to Haiti. It should be stressed that all democratic political elements were affected by the arrests, including Marc Bazin's party, the MIDH, considered to be a centrist party. Violence was employed as a matter of course in all the arrests. For example, Hubert de Ronceray declared on arrival at Miami that he had been kicked and struck with rifle butts and asserted that a cigarette had been stubbed out in one of his eyes.

16. Once again, General Avril used the pretext of an attempted coup d'état within the Presidential Guard, which allegedly took place on Friday, 19 January, when he decided to dismiss Sergeant Heubreux, spokesman of the rank and file who had brought him to power in September 1988 and subsequently saved him at the time of the April 1989 coup d'état. The sergeant had been promoted to the rank of lieutenant, and transferred away from the inner circle of power.

17. The violence sparked off unanimous protest. The ambassadors of the member countries of the European Economic Community represented in Haiti issued the following joint communiqué which they transmitted to their respective ministers:

> "The Twelve deplore the declaration of a state of siege in Haiti, the suspension of certain articles of the Constitution relating to fundamental freedoms and the arrest, torture and deportation of political opponents as flagrant violations of human rights and a setback for the democratic process.
>
> "When the EEC recently welcomed Haiti into the Lomé Convention, it expressed its interest in the economic development and the consolidation of democracy in the country.
>
> "The Twelve request the Haitian Military Government rapidly to end the state of emergency and to guarantee the renewal of the electoral process to facilitate a smooth transition to democracy."

18. The United States also protested, and the State Department decided not to resume economic assistance; the State Department's spokeswoman, Mrs. Margaret Tutwiler, said in particular that the action taken by the Haitian Government was scandalous and totally indefensible, that it damaged relations between the United States and Haiti and undermined the prospects of future assistance. France also decided to suspend co-operation with Haiti "owing to the extent of human rights violations and the suspension of public freedoms". It cancelled a visit that the Minister of Co-operation was to have made to Haiti during the week beginning 22 January. A protest was also made by Canada.

19. Mr. François Benoit, Haitian Ambassador to the United States, announced his resignation. The Haitian Chamber of Commerce and Industry denounced the "rule of arbitrariness" and the Association of Haitian Industrialists demanded an end to the state of siege and "the return of citizens forced into exile". Lastly, the Haitian church officially protested against the violations of human rights. Mgr. Willy Romelus, Bishop of Jérémie when interviewed by Radio Soleil, the Catholic Church radio station stated: "We protest against the wave of arbitrary arrests, of unlawful imprisonment, against the exile of several political leaders and the ill-treatment meted out to others" and invited the population to pray for "the deliverance of Haiti".

20. On Friday, 26 January 1990, General Avril announced that the state of siege would be lifted on the following Tuesday, i.e. on 30 January, and declared on television that it would be possible to end the "necessary evil that the short-lived state of emergency represented 'in view of' the positive results already achieved by efforts to curb the terrorist onslaught". However, he failed to indicate whether the seven public figures exiled the previous week would be allowed to return, whether the detainees would be released and whether press freedom, the only genuine achievement since February 1986, would be restored.

21. Attention should nevertheless be drawn to the tone of this speech in which political opponents were described as "enemies of the people" or as "anarchists challenging the authority of the State". Even if the state of siege were to be lifted in a few days, which seems likely, the desired objective of intimidation and fear has been achieved, and such an attitude leaves no room for optimism regarding the holding of genuinely democratic elections in normal conditions.

22. For several weeks General Avril has issued declarations in which he expressed a certain amount of reluctance to organize elections as long as the Haitian people was hungry, or as long as insecurity prevailed. At public meetings increasing numbers of individuals have been brandishing - with a questionable degree of spontaneity - banners with slogans such as "Avril for five years" or "Without Avril the country is done for" - disturbing omens for the future of a genuine transition.

23. This was particularly apparent when the Head of State returned from a trip to Taiwan. In a speech at the airport, the President described Haitians who had returned to the country after being exiled as "Stateless". It should be mentioned that, during his trip to Taiwan, part of the opposition had organized a week of protests, and on 12 January the National Rally had put out

a call for a general strike to ensure that "the President remained abroad and did not return to Haiti". Those protests had considerably irritated the Head of State, although they had not been followed by the population.

24. It is quite likely that the state of siege will indeed be lifted within a few days; however, the arrests, torture, ill-treatment and expulsions that have occurred are particularly serious, as they were directed at the non-violent democratic sector as a whole, as well as some human rights organizations, in an attempt to assimilate them to terrorist groups and discredit them should elections be organized.

25. These facts confirm the pessimistic conclusions reached in the report by the Expert (E/CN.4/1990/44) and further support his recommendations, in particular the recommendation that a special rapporteur should be appointed or an effective system of electoral control established, should elections be held.